

General Information Letter: Duty to withhold taxes from wages paid to employees temporarily in the State.

December 28, 1999

Dear:

This is in response to your letter dated November 26, 1999. Given the nature of your inquiry and the information you provide, I am responding with a General Information Letter. This is not to be taken as a statement of Department policy or as a binding ruling by the Department. As general information gathered in response to your particular questions, however, I hope that it is helpful to you. See 86 Ill. Adm. Code 1200.120(b) and (c).

In your letter you have stated the following:

Further to the recent telephone conversation between Harvey Anglum of the Taxpayer Assistance Division and xxxxxxxxxx of our office, we would be grateful for your advice regarding Illinois Income Tax withholding and taxation of Illinois source income for individual income tax purposes.

xxxxxxxxxxx is a xx registered company who has approximately four employees working in Illinois since February 1998. The employees have been sent by xxxxxxxxxx to work as consultants for a client company of xxxxxxxxxx. All the employees are xx citizens and the assignments to the US are for one or two years. Also, all the employees have xx employment contracts and their salaries and expenses are paid in the xx.

Based on the above information we would be grateful if you would advise us in writing whether the company should be withholding Illinois income tax from the employees' salaries and filing forms IL-941 and IL-W-3. Also, please advise whether the employees are required to file Form IL-1040 to report Illinois source income. (All employees file either Federal Form 1040 or Form 1040NR).

We would be grateful if you would advise us whether any of the following points would affect the requirement to withhold Illinois Income Tax or the filing of the Individual Income Tax Return:

1. The employee's assignment is for less than one year and does in fact last less than one year.
2. The employee's assignment is for one to two years (i.e., more than one year).
3. The employee's assignment is for one to two years and is then extended but is not permanent.
4. An employee is married to a U.S. citizen resident in Illinois.

### **Response**

In accordance with the Illinois Income Tax Act (IITA) at §701(a) and the Illinois Administrative Code at 100.7010(a), withholding is required for any compensation paid in this State. Compensation is paid in Illinois if the employee's service is localized herein and service performed entirely within the State is so localized (86 Ill. Admin. Code 100.7010(a)(1)(A)). A copy of the regulation is enclosed.

I gather from your letter that the employees in question do perform their service wholly within Illinois, or that any service not performed here is incidental to that which is performed here. If those are the correct assumptions, then withholding is necessary for all of them. In addition, the employees must file the IL-1040 or IL-1040NR to report income and claim any refund or pay any tax.

In addition, none of the four permutations you have outlined at the end of your letter would affect the withholding requirement in any way. Of course, only the income earned in Illinois is subject to the withholding requirement and a partial year's service here would require withholding for only that part of the year.

As stated above, this is a general information letter that does not constitute a statement of policy that applies, interprets or prescribes tax law. It is not binding on the Department. If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Sincerely,

Kent R. Steinkamp  
Staff Attorney -- Income Tax